

LABOUR DEPARTMENT

The 5th June, 1986.

No. 9/9/86-6 Lab./4286.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. The Chief Administrator, Faridabad Complex, Administration, N.I.T., Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 196/1982

between

SHRI BAL RAJ BHAYANA, WORKMAN AND
THE MANAGEMENT OF M/S THE CHIEF
ADMINISTRATOR, FARIDABAD COMPLEX
ADMINISTRATION, N.I.T., FARIDABAD.

Present:

Shri S. S. Gupta, for the workman.

Mrs. Ranjana Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Bal Raj Bhayana and the Management of M/s The Chief Administrator, Faridabad Complex Administration, N.I.T. Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Bal Raj Bhayana was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in the demand notice dated 30th December, 1981, alleged that he was working as Dispenser in Faridabad Complex Administration for the last 6 years and was drawing a salary of Rs. 450/- per month. It is further alleged that the charges levelled against the claimant were

incorrect and that no legal enquiry was held against him and that the principles of natural justice were flouted. It is further alleged that the termination of service of the claimant,—vide order dated 1st March, 1979 was illegal and that the appeal filed by the claimant to the Secretary, Local Self Department, was rejected on 10th August, 1981. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in its written statement dated 26th July, 1982 pleaded that the respondent was not an industry. It was further pleaded that the claimant was negligent and careless in performing his duties and was served with the charge-sheet dated 26th December, 1977 and after getting his explanation, the enquiry was held against him. It was also pleaded that the claimant was held guilty and his services had been terminated legally.

4. The claimant in his rejoinder dated 23rd August, 1982, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 24th August, 1982 and 4th July, 1985:—

- (1) Whether the respondent was not an industry? OPM
- (2) Whether the enquiry is fair and proper? OPM
- (3) Whether the termination of service of Shri Bal Raj Bhayana was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the Management have examined five witnesses and documents Ex. M-1 to M-19 have been tendered into evidence. The claimant has appeared in the witness-box and document Ex. W-1 has been tendered into evidence. It may further be mentioned that issue No. 1 and 2 were decided on 6th November, 1985, when it was held on issue No. 1 that the respondent was an industry while on issue No. 2 it was held that the domestic enquiry has not been found to be fair and proper and thus stood vitiated and the Management was called upon to lead evidence on the misconduct against the claimant. Thereafter, both the parties led their evidence on issue No. 3. After hearing the representatives of both the parties and going through the entire evidence, my finding on issue No. 3 is as under:—

ISSUE NO. 3:

7. Ex. M-5 is the copy of the charge-sheet served on the claimant according to which he was charge-sheeted as under:--

- (1) That the claimant who was a dispenser in the Dispensary run by Faridabad Complex Administration, gave baral-gan injection without testing to Shri Sunehri Lal, which caused reaction and rashes (boils) were found on his body.
- (2) That Shri M. K. Midha, Administrator, Faridabad Complex Administration Old Zone, enquired from the claimant the reasons for giving above injection without testing when the claimant misbehaved with the Administrator.
- (3) That Shri Prem Sagar, Steno was given a letter to be delivered to the claimant enquiring as to whether the claimant was on deputation or was an employee of the Faridabad Complex Administration, but the claimant refused to accept the letter.
- (4) That it was alleged that the claimant indulged in drinking, selling medicines, misbehaved with female patient, and the general public.

CHARGE No. 1:

8. As regard charge No. 1, the Management has examined MW-2 Shri M. K. Midha, who was then Administrator, Faridabad Complex Administration, Faridabad Old Zone. This witness proved the complaint Ex. M-13, in which the details of the incident are given. He further stated that the claimant was charge-sheeted by the Chief Administrator, Faridabad Complex Administration. In this complaint, it is mentioned that on 8th August, 1977 at about 3.30 p.m. Shri Sunehari Lal complained to him regarding giving of the injection by the claimant without testing and rashes (boils) were found on the body of Shri Sunehari Lal due to reaction of the injection. The testimony of MW-3 Dr. O. P. Sarwal is relevant to this extent when he deposed that the Dispenser was not competent to give this injection without prescription of the Medical Officer. MW-4 Shri Sunehari Lal complainant stated that on 8th August, 1977 he felt pain in his abdomen. When he went to the claimant, who gave the injection without any pretest and had

not consulted the Doctor, which caused reaction on his body. He further stated that small (boils) rashes were found on his body. He reported the matter to Mr. M. K. Midha, Administrator. MW-1 Shri Bal Raj Bhayana, claimant stated that on 8th August, 1977 at about 3.00 p.m., some sweepers came to his residence and told him that there was chronic pain in the abdomen of Shri Sunehari Lal, Sanitary Jamadar, when the claimant went to the Dispensary and gave baral-gan injection because the Doctor Incharge had gone to Ballabgarh to give evidence. The testimony of MW-2 Shri M. K. Midha, Administrator finds corroboration from the testimony of MW-3 Dr. O. P. Sarwal and MW-4 Shri Sunehari Lal, complainant even though the claimant has admitted that he gave baral-gan injection without testing to Shri Sunehari Lal because the Doctor Incharge was not available at that time. The claimant who was Dispenses was not competent to prescribe this injection, but, on the other hand, the Medical Officer could do so and that the injection could not be given without testing. If the Doctor Incharge was not available, the patient could be referred to B. K. Hospital, Faridabad, but it was not done by the claimant. Charge No. 1, therefore, stands proved against the claimant.

CHARGE No. 2 :

9. MW-2 Shri M. K. Midha has proved his complaint Ex. M-13, in which it is recited that he called the claimant on the complaint of Shri Sunehari Lal as to why he gave injection without testing but the claimants behaviour was rude. MW-4 Shri Sunehari Lal and Shri Prem Sagar, Steno MW-5 have not stated anything in this respect. In the absence of any corroborative evidence, this charge does not stand proved.

CHARGE NO. 3:

10. MW-2 Shri M. K. Midha proved his complaint Ex. M-13, in which it is recited that Shri Prem Sagar Steno was sent to enquire from the claimant as to whether he was on deputation or was an employee of Faridabad Complex Administration and that the claimant misbehaved with him. MW-5 Shri Prem Sagar Steno stated that Shri M. K. Midha, Administrator, asked him to enquire from the claimant as to whether he was on deputation or was an *ad hoc* employee and that he went to the claimant who told him that the information could be given if he brought any letter in writing. He further stated that he went to Mr. M. K. Midha, Administrator, who gave the letter to him, when he went to the claimant. He further stated that the claimant refused to receive the letter and stated that he would receive the same during duty hours. He also stated that

the claimant asked him to run away and he came back and informed Mr. M. K. Midha, Administrator accordingly. The testimony of MW-5 Shri Prem Sagar, Steno thus corroborates the version of Shri M. K. Midha, MW-2, given in the complaint Ex. M-13 to the effect that the claimant refused to receive the letter sent by Mr. M. K. Midha, Administrator, through his steno and asked the steno to run away. Charge No. 3 therefore, stands proved against the claimant.

CHARGE NO. 4:

11. As regards the fourth charge, Shri M. K. Midha, Administrator, MW-2 stated in cross-examination that the Doctor-Incharge verbally told him that the claimant did not enjoy good reputation and misbehaviour with patient, and took drinks. He further stated that no written complaint was made by the Doctor in that respect but the Doctor had told him that he had warned the claimant regarding misconduct. Dr. S. P. Tyagi, who was Incharge of the Dispensary, has not been examined by the respondent. Consequently, on the basis of the oral complaint made by the Doctor Incharge to the Administrator, Faridabad Complex Administration, Faridabad Old Zone, it is not possible to hold that this charge stands proved against the claimant.

12. In view of the above discussion, it is held that the charges 2 and 4 do not stand proved against the claimant, while charges No. 1 and 3 have been proved against the claimant as mentioned above.

13. It was argued by the representative of the claimant that the punishment of dismissal awarded to the claimant was harsh and oppressive. Reliance was placed on the ruling reported as *Management of M/s P. Orr. and Sons (P) Ltd., and the Presiding Officer, Labour Court, Madras and another*, 1974-I-LLJ page 517. The representative of the Management, on the other hand argued that the punishment awarded to the claimant was proportionate to the misconduct proved against him. The ruling is distinguishable on facts because in that case the finding was one of theft of empty oil tin of Rs. 3.30 paise only. Keeping in view the circumstances that charge Nos. 2 and 4 have not been proved against the claimant and only charge Nos. 1 and 3 has been proved against the claimant it is a fit case in which the punishment of dismissal should be set aside, but the punishment of termination of his services would meet the ends of justice. Consequently, the impugned order of dismissal, dated 1st May, 1979 Ex. M-11 is set aside and would be substituted by the order of termination with

effect from 1st May, 1979 and consequently, the claimant would be entitled to dues including compensation according to rules as if his services were terminated on 1st May, 1979. The award is passed accordingly.

Dated the 5th May, 1986.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 311, dated 5th May, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6/Lab./4287.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the Management of M/s. Mani Lal Sharma and Brothers, Brick Kiln Owner, Allahpur, Tehsil Palwal, District Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

References Nos. 291/1983 to

315/1983 and 322 to 363/1983

between

SARVSHRI DHARAMPAL, (2) KISHAN CHAND, (3) HIRA, (4) BALU, (5) BAHAL SINGH, (6) KISHAN, (7) KALJU, (8) RAM SARUP, (9) RAM KISHAN, (10) SHIV CHARAN (11) MEERA, (12) RAJU, (13) JILKU, (14) SUNDRI, (15) OM PARKASH, (16) BANE SINGH, (17) MAHABIR, (18) SAIWO, (19)

BHUP SINGH, (20) PREM WATI, (21) RAGU-BIRO, (22) SATWANTI, (23) CHANDA, (24) MAHABIR, (25) LAL SINGH, (26) GORDHNI, (27) RAM SARUP, (28) CHATRO, (29) DAYA WATI, (30) GYASO, (31) JAI MANTI, (32) BUDH SINGH, (33) NARAINI, (34) KARUTI, (35) CHET RAM, (36) RAM WATI, (37) LILA, (38) MANGLO, (39) LADDO, (40) SHANTI, (41) KHILYA, (42) BIR SINGH, (43) KARAN SINGH, (44) BIRO, (45) CHOKHA, (46) UDAY RAM, (47) RAM CHAND, (48) PAYARE, (49) CHANGA, (50) CHATAR, (51) NUNE, (52) MOHAN, (53) SATHIR, (54) SAWTRI, (55) SURESH, (56) NANAK, (57) GIRI RAJ, (58) RAM WATI, (59) DHAN SINGH, (60) PARWATI, (61) BHART LAL, (62) ANGURI, (63) LAJWANTI, (64) MOJI, (65) PAHLAD SINGH, (66) SHANTI AND (67) RAISAM AND THE Management of M/s. Muni Lal, Sharma & Brothers Brick-kiln Owner Allahpur, Tehsil Palwal, District Faridabad.

Present:—

Shri R. L. Sharma, for the workmen.

Shri G. S. Chaudhari, for the Management.

AWARD

This award will dispose of 67 consolidated references bearing Nos. 291/83 to 315/1983 and 322 to 363/1983 which were consolidated on 14th May, 1985 on the request of the parties. The main proceedings have been held in reference No. 291/1983 (Shri Dharam Paul *versus* M/s. Muni Lal Sharma and Brothers Brick-kiln Owner Allahpur, Tehsil Palwal, District Faridabad.)

2. In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the 67 above workmen and the Management of M/s. Muni Lal Sharma and Brothers, Brick-kiln Owner Allahpur, Tehsil Palwal, District Faridabad, to this Tribunal for adjudication:—

Whether the termination of services of 67 workmen as mentioned above was justified and in order? If not, to what relief are they entitled?

3. Notices were issued to all the parties. In the claim statement dated 12th May, 1984, it was alleged that the claimants were employed by the respondent in 1980, who terminated their services on 7th March, 1982, without any notice nor any enquiry was held against them. It was further alleged that termination of their services was illegal and as such they were entitled to reinstatement with full back wages.

4. The Management in its written statement dated 17th August, 1984, pleaded that there was no relationship of employer and employee between the parties. It was further pleaded that no industrial dispute existed between the parties because the claimants had not raised the demand regarding their alleged termination with the Management. It was also pleaded that the claim statements were fraudulent and fabricated. It was pleaded that the respondent Kiln remained closed from 1st October, 1979 to 30th September, 1981. It was further pleaded that the applicants were never seen and employed by the respondent at any post and that work on Brick-kiln being seasonal for a few days was allotted through Contractors/Jamadari System.

5. On the pleadings of the parties, the following issues were framed on 7th November, 1984:—

- (1) Whether there is no relationship of employer and employee between the parties? OPM
- (2) Whether no industrial dispute exists between the parties as pleaded? OPM
- (3) Whether the claim statement is fraudulent/fabricated as pleaded? OPM
- (4) Whether the termination of service of the 67 workmen as mentioned above was justified and in order? If not, to what relief are they entitled? OPM.

6. It may be mentioned that the Management has examined 4 witnesses and documents Ex. M-1 to M-6 have been tendered into evidence. The claimants have examined 8 witnesses. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE No. 1:

7. MW-1 Shri Muni Lal Sharma, partner in the respondent firm stated that four types of jobs were done on the brick-kiln through the contractor. He further stated that Ex. M-1 to M-3 were the copies of the agreement executed by the contractors and that the labour was employed by the contractors and not by the respondent. He also stated that the wages to the labourers were disbursed by the contractors. MW-2 Shri Narain Singh, Documents Writer, stated that Ex. M-1 to M-3 were executed by Sarvshri Jiwan Ram, Malkhan and Nanak and that the

entries were made by him in his register on 15th August, 1981, 14th August, 1981 and 9th September, 1981, respectively, and that both the parties to the agreements had thumb-marked/signed in his presence. On the other hand, the claimants have examined WW-1 Shri Nanak, Shri Uday Ram, WW-3 Shri Budh Singh, WW-4 Shri Chatter WW-5 Shri Ram Sarup, WW-6 Shri Kishan WW-7 Shri Bhagwan Sahai and WW-8 Shri Chokh Ram, who have deposed that they were employed on the Brick Kiln in 1980 as Moulder by the Respondent and that no Jama-dar was employed there and they used to reside in the huts provided by the respondent. They have also deposed that full wages were not paid to them and when they demanded full wages, they were turned out by the respondent.

8. A perusal of the above evidence would show that the case of respondent is that the claimants were employed by the Contractors, while the case of the claimants is that they were employed by the respondent and not by the contractors. The copies of the agreements Ex. M-1 to M-3 have been placed on file by the respondent alleged to have been executed by Shri Jiwan Ram, Shri Malkhan and Shri Nanak in 1981. MW-2 Shri Narain Singh, Documents Writer, admitted in cross examination that he had scribed these agreements, but he did not know the executors personally. Consequently, his testimony does not help the respondent because this Document Writer did not know Shri Malkhan, Shri Nanak and Shri Jiwan Ram personally. Further the attesting witnesses of these documents had not been produced by the respondent to show that these documents were in fact, executed by these persons, as named above. Moreover Shri Malkhan, and Shri Jiwan Ram alleged Contractor have not been produced. Only Shri Nanak has been produced by the claimants as WW-1 who stated that the alleged agreement Ex. M-3 was neither executed nor signed by him. The respondents have not produced any account to show that the alleged contractors used to make payments. No specific plea was taken in the Written Statement that Shri Malkhan, Shri Jiwan Ram and Shri Nanak were engaged as Contractors. On the other hand, it was pleaded that the work was allotted through contractors and that the respondent had never seen the claimants. When all these circumstances are taken into consideration, it becomes apparent that the claimants were not working under the alleged contractors, but on the other hand they were the employees of the respondent, who were owners of the

Brick Kiln, especially when the execution of the alleged agreements Ex. M-1 to M-3 does not stand proved for the detailed reasons mentioned above. In the ruling reported as *Hussainbhal, Calicut and Alath Factory Thozhilali Union, Calicut and others*, 1978-II-L.L.J. 397, it is laid down that where a worker or group of workers labours to produce goods or services are for the business of another, that other is, in fact, the employer who has economic control over the workers subsistence still and continued employment and if he, for any reason, chokes off the workers is virtually laid off. It is also laid down that the presence of intermediate contractors with whom alone the workers have immediate or direct relationship, ex-contract is of no consequence when, on lifting veil or looking at the conspectus of factors governing employment we discover the naked truth, though draped in different paper arrangement, that the real employer is the Management and not the immediate contractor. It may be mentioned that the representative of the Management placed reliance on the ruling reported as *Chotanagpur Coal Fields Workers Union and Kargali Colliery*, 1952-II-L.L.J., Page 23. In that case, it was held that a person working in a colliery under a contractor did not become the workman of the colliery by reasons of the fact that the Manager happened to suspend him because the suspension by the Manager was the result of the provision of Section 28 of the Indian Mines Act. This ruling is distinguishable on facts because in the present case, the alleged contract system has not been proved. The second ruling is *Cooke & Kelvev Ltd. and Their Employees*, 1955-IILLJ, page 532. In that case a firm of watch repairers gave certain work for execution to persons not subject to disciplinary control of the firm and they were not given privileges enjoyed by the employees of the firms and were allowed to bring helpers with them. It was held that the workmen were not the employees of the firm but of independent contractors. The ruling is also distinguishable on facts because the respondent has failed to prove that the claimants were the employees of the alleged contractors. In the third ruling reported as *Punjab National Bank Ltd., Delhi and Shiva Nandan Sharma*, 1954-I-L.L.J., 638, a person entered into contract with A to run a pay office at a particular place and power of nomination, appointment, and dismissal of other staff for maintaining the pay office was reserved to the contractor. In that case, it was held that the workmen were the employees of

the contractor. This ruling does not help the respondent being distinguishable on facts because existence of the contract system has not been proved.

9. In view of the above discussion, it is held that the respondent has failed to prove that there was no relationship of employer and employee between the parties. The issue is decided accordingly against the Management.

ISSUE No. 2:

10. It was alleged by the representative of the Management that the claimants did not raise any dispute with the Management in the first instance and as such no industrial dispute existed between the parties. Reliance was placed on the ruling reported as *Fedders Lloyed Corporation Private Ltd. and Lieutenant Governor Delhi and others*, 1970-Lab. I.C. 421, in which it is laid down that the demand by the workmen and rejection by the employer was necessary and that the demand on Conciliation Officer and its communication by him was not sufficient. On the other hand, in the ruling reported as *Shambhu Nath Goyal and Bank of Baroda, Jullundur*, 1978-I-L.L.J. page 484, it is laid down that making a demand for reinstatement is not a *sine qua non* for an industrial dispute to come into existence. In the latest ruling reported as *M/s. Rama Krishna Mills (Coimbatore) Ltd., Gopalpethy Post Coimbatore and the Government of Tamil Nadu, etc.*, 1984-II-L.L.J., page 259, in which a large number of previous rulings have been considered, it was held that a written demand on the Management is not in all cases a *sine qua non* and that there must arise a dispute or difference within the meaning of the Industrial Disputes Act, 1947, and that the talks and discussions before the Assistant Commissioner of Labour related to the order of dismissal and the demand to set them at naught and take back the workmen. It was held that the demand as such need not in all cases be directly made by representation to the Management and the demand could be made through other sources also. Consequently the Management has failed to prove that no industrial dispute existed between the parties. Merely because the demand was raised through Labour-cum-Conciliation Officer as stated by MW-3 Shri Ashok Kumar. The issue is decided accordingly against the Management.

ISSUE No. 3:

11. It was argued by the representative of the Management that WW-1 Shri Nanak, WW-6 Shri Siri Kishan and WW-7 Shri Chet Ram had stated that they did not affix their signatures on the claim statement/demand notices. The submission was that the claim statements/demand notices were forged and fraudulent documents. WW-7 Shri Chet Ram stated that the authority letter was signed by him. WW-6 Shri Siri Kishan stated that the demand notice was given after consulting him. WW-1 Shri Nanak stated that he was a illiterate person and as such could not say if the demand notice placed on file was the same which was given by him. These three claimants thus did not deny having given the demand notice. The remaining other claimants who have been examined in these references have not denied their signatures/thumb impressions on the demand notices/claim statements. 67 references have been consolidated on the request of both the parties as mentioned above. Consequently, it cannot be held that the claim statements and demand notices are fraudulent documents, especially when giving of the demand notice is not being denied by the workers. Merely because 3 workers have not been able to identify their signatures on the claim statements/demand notices is no ground to hold that these documents are fraudulent because the remaining workers have not denied the execution of these documents. The issue is decided accordingly against the Management.

ISSUE No. 4:

12. It was argued by the representative of the Management that the Brick Kiln remained closed from 10th July 1979 to 11th November, 1981. MW-1 Shri Muni Lal Sharma, Partner of the respondent has produced certificate copy Ex. M-4. This certificate is alleged to have been issued by the District Food and Supply Controller, Faridabad on 11th May, 1983, in which it is recited that the Brick Kiln of the respondent in Village Allapur, Tehsil Palwal, did not function during the period 10th July, 1979 to 11th November, 1981. In the present case, the demand notice was given on 30th March, 1983. The certificate Ex. M-4 was thus obtained thereafter on 11th May, 1983, for the period 10th July, 1979 to 11th November, 1981. The concerned official of the department has not been examined. Moreover the Management has examined MW-4 Shri J. M. Malhotra, Provident Fund Inspector, Faridabad,

who stated that the Brick Kiln was brought under the Provident Fund Scheme with effect from 1st December, 1980 and that inspection was carried out on different dates on 7th February, 1983, 7th March, 1984, 12th April, 1985 and 23rd September, 1985, when there were two employees. This inspection does not help the respondent because the services of the claimants were terminated on 7th March, 1982 and inspection thus relates to the later period. Moreover, this witness stated in cross-examination that Provident Fund Scheme applied when there were 20 workmen in any Unit and that on 1st December, 1980, there were 56 workers in this brick kiln on which date this brick kiln was brought under the Employees Provident Fund Scheme. It is thus apparent that on 1st December, 1980, 56 workers were employed by the respondent. If the Brick Kiln was lying closed from 10th July, 1979 to 11th November, 1981 as mentioned in the certificate Ex. M-4, the question of employing 56 workers on 1st December, 1980 did not arise. It is thus obvious that the respondent Brick Kiln was being run on 1st December, 1980 with 56 workers. As such the recitals made in the document Ex. M-4 are inconsistent with the testimony of MW-4 Shri J. M. Malhotra, Provident Fund Inspector. Under these circumstances the document Ex. M-4 does not help the respondent. On other hand all the 8 witnesses produced by the claimants have stated that the brick kiln had functioned during all this period and was never closed. As such, the respondent has failed to prove that the brick kiln remained closed for the period 10th July, 1979 to 11th November, 1981.

13. It may be mentioned that the representative of the Management placed reliance on the ruling reported as *Firestone Tyre and Rubber Company of India, Private Limited versus The workmen employed represented of Firestone Tyre Employees Union*, 1981(2) S.L.R. page 714, *India Tourism Development Corporation, New Delhi v. Delhi Administration, Delhi and others*, 1982-Lab. I.C. 1309. *The Jaipur Udyog Ltd. v. The Cement Works, Karamchhari Sangh Sahu Nagar*, 1972-LIC 676, in which it is laid down that Industrial Tribunal is not competent to decide the matter not referred to it. All these rulings are distinguishable on facts because in the present case the dispute was referred to whether the termination of services of the claimants was justified and in order or not. The Management took the plea that there was no relationship between the parties. This plea was incidental to main point in issue having been raised by the Management in the written statement. Consequently, the references made by the Government are competent.

14. In the present case, the Management should have complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947. MW-1 Shri Muni Lal Sharma, Partner of the respondent stated that the maximum period of running the brick kiln was six months in a year. Section 25-B (2) (ii) of Industrial Disputes Act lays down that the workman shall be deemed to be in continuous service under an employer for a period of six months, if he has actually worked under the employer for not less than 120 days. In the present cases, the claimants case is that they were employed in 1980 and their services were terminated on 7th March, 1982. In any case, they had to show that they had worked for 120 days during the period of six months because the brick kiln was run for six months in a year as stated by MW-1 Shri Muni Lal Sharma. Consequently, the provisions of Section 25-F read with Section 25-F(2)(ii) of the Industrial Disputes Act, 1947 are attracted to the facts of the present references and since no notices pay or compensation was given to the claimants, therefore, the termination of their services was neither valid nor justified. Keeping in view the circumstances thus the brick kiln is a seasonal industry and the respondents have employed the other workers in place of the claimants. The ends of justice would be met if instead of reinstatement, each claimant is given compensation equivalent to one year's wages which they were drawing on 7th March, 1982, when their services were terminated. The award is passed accordingly.

Dated the 5th May, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 313, dated the 5th May, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.